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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,992	10/30/2003	William J. Cooper	81961CIP	7400

7590 05/04/2005  
KRIEGSMAN & KRIEGSMAN  
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Framingham, MA 01702

EXAMINER
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RODRIGUEZ, RUTH C

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 05/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/697,992

Applicant(s)

COOPER ET AL.

Examiner

Ruth C Rodriguez

Art Unit

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) 20-45 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of Invention I, Species I in the reply filed on 28 March 2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims 20-45 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Invention and Species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 28 March 2005.

### ***Priority***

3. Applicant's claim for domestic priority under 35 U.S.C. 119(e) is acknowledged.

### ***Oath/Declaration***

4. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It was not executed in accordance with either 37 CFR 1.66 or 1.68. It is missing the signature of Thomas Shilale.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Daenen (US D 259,128).

A fastener assembly (10) comprises a plastic fastener (12) and identifying matter (30). The fastener comprises a filament (14), a paddle (20) at one end of the filament and a cross-bar (28) at the other end of the filament. The identifying matter is provided into the paddle of the plastic fastener (Figs. 1, 4 and 6).

Daenen also discloses that:

- The paddle includes a substantially flat top surface (34).
- The identifying matter is provided onto the substantially flat top surface of the paddle of the plastic fastener (Figs. 1, 4 and 6).
- The top surface of the paddle is generally rectangular in shape (Figs. 1 and 2).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 5-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daenen.

Daenen discloses a fastener having all the features listed above in paragraph for the rejection of claims 1-4. Daenen fails to disclose that the identifying matter is printed onto the paddle of the fastener using an inkjet printer. However, the method of forming the device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight.

For claims 6-10, Daenen fails to disclose the identifying matter is in the form of a barcode, an identification code, numeric identification code, product identifier or company identifier. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have a barcode, an identification code, a numeric identification code, a product identifier or a company identifier as the identifying matter since it has been held that where the only difference between a prior art product and a claimed product is printed matter that is not functionally related to the product, the content of the printed matter will not distinguish the claimed product from the prior art. *In re Ngai*, \_\_\_ F.3d \_\_\_, 2004 WL 1068957 (Fed. Cir. May 13, 2004). See also *In re*

*Gulack*, 703 F.2d 1381, 1385-86, 217 USPQ 401, 404 (Fed. Cir. 1983)("Where the printed matter is not functionally related to the substrate, the printed matter will not distinguish the invention from the prior art in terms of patentability..[T]he critical question is whether there exists any new and unobvious functional relationship between the printed matter and the substrate.").

9. Claims 12-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daenen in view of Russell (US 4,712,677).

Daenen discloses a fastener assembly having all the limitations mentioned above for the rejection of claim 1. Daenen fails to disclose the fastener assembly can be provided in a supply of fastener stock. However, Russell teaches a supply of fastener stock comprises a plurality of interconnected fastener assemblies (Figs. 1-7). Each fastener assembly comprises a plastic fastener (50,51,52). The plastic fastener comprises a filament (52), a paddle (50) at one end of the filament and a cross-bar (51) at the other end of the filament. This supply of fasteners enables the use of an apparatus for installing each fastener assembly onto a selected location (C. 1, L. 65-68 and C. 2, L. 2-47). Therefore, it would have been obvious to one having ordinary skill in the art at the time of applicant's invention to have a supply of fastener stock comprising a plurality of interconnected fastener assemblies as taught by Russell for the fastener assembly disclosed by Daenen. Doing so, enables the use of an apparatus for installing each fastener assembly onto a selected location.

Russell also teaches that:

The cross-bars of successive fastener assemblies are connected together by a severable connector (54).

The paddles of successive fastener assemblies are connected together by at least one severable connector (57).

The fastener assembly further comprises a molding strip (54).

For claims 16-19, Daenon fails to disclose the identifying matter is in the form of a barcode, an identification code, a unique identification code or a unique numeric identification code. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have a barcode, an identification code, a unique identification code or a unique numeric identification code as the identifying matter since it has been held that where the only difference between a prior art product and a claimed product is printed matter that is not functionally related to the product, the content of the printed matter will not distinguish the claimed product from the prior art. *In re Ngai*, \_\_\_ F.3d \_\_\_, 2004 WL 1068957 (Fed. Cir. May 13, 2004). See also *In re Gulack*, 703 F.2d 1381, 1385-86, 217 USPQ 401, 404 (Fed. Cir. 1983) ("Where the printed matter is not functionally related to the substrate, the printed matter will not distinguish the invention from the prior art in terms of patentability..[T]he critical question is whether there exists any new and unobvious functional relationship between the printed matter and the substrate.").

**Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Du Bois (US 2,985,006), Von Meyer (US 3,417,496), Daenen (US D259,128 and US 4,266,354), Muhi et al. (4,483,622), Kato (US RE. 32,332), Allport (US 5,535,491), Dumont (US 5,587,703), Guarriello et al. (US 5,941,019), Deschenes et al. (US 5,949,336), Deschenes (US 6,025,781) and Nishida et al. (US 6,098,253) are cited to show state of the art with respect to fastener assemblies having some of the features being claimed by the current application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruth C Rodriguez whose telephone number is (571) 272-7070. The examiner can normally be reached on M-F 07:15 - 15:45.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (571) 272-7075.

Submissions of your responses by facsimile transmission are encouraged. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Recognizing the fact that reducing cycle time in the processing and examination of patent applications will effectively increase the patent's term, it is to your benefit to submit responses by facsimile transmission whenever permissible. Such submission will place the response directly in our examining group's hands and will eliminate Post Office processing and delivery time as well as PTO's mailroom



processing and delivery time. For a complete list of correspondence **not** permitted by facsimile transmission, see MPEP § 502.01. In general, most responses and/or amendments not requiring a fee, as well as those requiring a fee but charging such fee to a deposit account, can be submitted by facsimile transmission. Responses requiring a fee that the applicant is paying by check **should not be** submitted by facsimile transmission separately from the check.

Responses submitted by facsimile transmission should include a Certificate of Transmission (MPEP § 512). The following is an example of the format the certification might take:

I hereby certify that this correspondence is being facsimile transmitted to  
the Patent and Trademark Office (Fax No. (703) 872-9306) on       (Date)      .

(Typed or printed name of person signing this certificate)


(Signature)

If your response is submitted by facsimile transmission, you are hereby reminded that the original should be retained as evidence of authenticity (37 CFR 1.4 and MPEP § 502.02). Please do not separately mail the original or another copy unless required by the Patent and Trademark Office. Submission of the original response or a follow-up copy of the response has been transmitted by facsimile will cause further unnecessary delays in the processing of your application, duplicate responses where fees are charged to a deposit account may result in those fees being charged twice.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-6640.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Ruth C. Rodriguez  
Patent Examiner  
Art Unit 3677

rcr  
April 29, 2005